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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,223	02/23/2007	Willibrordus Augustinus Van Der Weide	B-6013PCT 623479-6	9848
36716	7590	12/05/2008		
LADAS & PARRY 5670 WILSHIRE BOULEVARD, SUITE 2100 LOS ANGELES, CA 90036-5679			EXAMINER LANGEL, WAYNE A	
			ART UNIT 1793	PAPER NUMBER
			MAIL DATE 12/05/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/580,223

**Applicant(s)**VAN DER WEIDE, WILLIBRORDUS  
AUGUSTINUS**Examiner**

Wayne Langel

**Art Unit**

1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 6-8 and 10-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8 and 10-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kurtzman, Jr. (newly cited). Kurtzman, Jr. discloses a cellulosic medium for growing mushrooms wherein a liquid mixture containing sources of soluble carbon and nitrogen is fermented and mixed with cellulosic material. (See the Abstract and col. 2, lines 18-30.) Kurtzman, Jr. discloses at col. 3, lines 12-25 that the source of carbon may constitute whey. The difference between the process disclosed by Kurtzman, Jr., and that recited in claims 1-4, 6-8 and 10-12, is that Kurtzman, Jr. does not disclose that the fermented whey should be subjected to a filtration step before addition of the cellulosic material. It would be obvious to subject the fermented whey to a filtration step before addition of the cellulosic material in the process of Kurtzman, Jr. One of ordinary skill in the art would be motivated to do so, since Kurtzman, Jr. discloses at col. 2, lines 19-28 that a fermented liquid mixture is prepared and that such liquid mixture is contacted with cellulosic material. Since the mixture which is contacted with the cellulosic material is required to be liquid, one of ordinary skill in the art would appreciate that any solid particles which may be present should be filtered to obtain the liquid.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Kurtzman, Jr. No distinction is seen between the fermented whey and biological fertilizer and method of its use as disclosed by Kurtzman, Jr., and that recited in claims 13-22. Kurtzman, Jr. is relied upon as discussed hereinbefore.

Claims 1-4, 6-8 and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Branconnier et al (newly cited). Branconnier et al disclose a process for fermentation of organic waste, wherein the organic waste may be a mixture of whey and a cellulosic material. (See col. 5, lines 3-7 and col. 6, line 65 to col. 7, line 24.). The difference between the process disclosed by Branconnier et al, and that recited in claims 1-4, 6-8 and 10-12, is that Branconnier et al does not disclose that the fermented whey should be subjected to a filtration step before addition of the cellulosic material. It would be obvious to subject the fermented whey to a filtration step before addition of the cellulosic material in the process of Branconnier et al. One of ordinary skill in the art would be motivated to do so, since Branconnier et al, since one would appreciate that the wastes disclosed at col. 7, lines 8-23 of Branconnier et al would include solid matter which would be undesirable in the final fertilizer product.

Claims 13-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Branconnier et al. No distinction is seen between the fermented whey and biological fertilizer and method of its use as

disclosed by Branconnier et al, and that recited in claims 13-22. Branconnier et al is relied upon as discussed hereinbefore.

Claims 13-22 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over GB 2,294,257 or UK 1,500,326 or Holt et al. No distinction is seen between the fermented whey and biological fertilizer and method of its use as disclosed by GB 2,294,257 or UK 1,500,326 or Holt et al, and that recited in claims 13-22.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-4, 6-8 and 10-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is indefinite as to whether "the addition of" would constitute a positive process step of adding. The phrase "the addition of" should be changed to -- adding -- to avoid this rejection. In claims 4 and 6, respectively, "preferably" and "of step" render the scope of the claims vague and indefinite. In claim 13, it is indefinite as to whether the fertilizer is actually obtained by the method of claim 1, since claim 13 recites that the fertilizer is merely "obtainable". In claim 14, it is indefinite as to what would constitute "fermented whey for the preparation of a biological fertilizer according to claim 13", since claim 13 already recites the biological fertilizer. Claims 16-18, 20 and 21 provide for the use of a fertilizer or composition, but, since the claims do not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass.

A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 16-18, 20 and 21 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Wayne Langel whose telephone number is 571-272-1353. The examiner can normally be reached on Monday through Friday, 8 am - 3:30 pm Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Stanley Silverman can be reached on 571-272-1358. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Wayne Langel/  
Primary Examiner, Art Unit 1793

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